

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

76-7013

PATRICIA A. FAHEY,

PLAINTIFF

V.

NORMAN F. CODO,

DEFENDANT

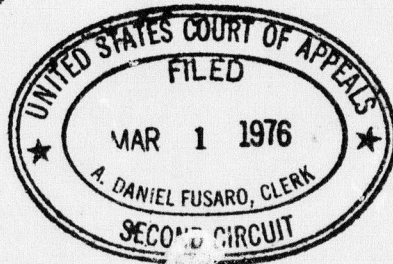
SHIRLEY E. FAHEY,

DEFENDANT

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APPENDIX FOR APPEAL FROM MEMORANDUM AND ORDER  
OR JUDGMENT FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX FOR APPELLANT



PATRICIA A. FAHEY  
PRO SE  
750 Park Avenue  
New York, New York  
10021

PAGINATION AS IN ORIGINAL COPY



APPENDIX

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RELEVANT DOCKET ENTRIES

- PLAINTIFF'S COMPLAINT FILED ON 09/29/75
- DEFENDANTS' AFFIDAVIT AND NOTICE OF MOTION  
FILED ON 10/28/75
- DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION  
FILED ON 10/28/75
- PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO  
DISMISS FILED ON 10/29/75
- PLAINTIFF'S SUPPLEMENTAL MEMORANDUM FILED ON 11/3/75
- PLAINTIFF'S AFFIDAVIT FILED ON 11/7/75
- DEFENDANTS' REPLY MEMORANDUM FILED ON 11/12/75
- PLAINTIFF'S REPLY MEMORANDUM FILED ON 11/12/75
- OPINION NO. 43529 FILED ON 12/12/75



LIST OF EXHIBITS

- (1) LAST WILL AND TESTAMENT OF PLAINTIFF'S FATHER, PATRICK D. FAHEY, ADMITTED ON 1/29/71
- (2) LETTERS FROM THE ESTATE OF PATRICK D. FAHEY BY SHIRLEY E. FAHEY, ONE OF THE EXECUTORS AND TRUSTEES, TO WE ANSWER PHONES CO. OF 8/2/72 AND TO ROBERT DOUGLAS MAID SERVICE INC. OF 8/15/72 IN REFERENCE TO PATRICIA A. FAHEY
- (3) LETTER FROM MORGAN MANHATTAN STORAGE CO. OF 11/6/75 IN RELATION TO PLAINTIFF'S LOSS OF FURNITURE, BOOKS, AND OTHER PERSONAL PROPERTIES
- (4) ONE OF THE NOTICES OF DISPOSSESS FROM INSJARL REALTY CO. OF 5/13/74 TO PATRICIA A. FAHEY
- (5) CERTIFIED MAILED LETTER FROM SHIRLEY E. FAHEY, ONE OF THE EXECUTORS AND TRUSTEES, OF 12/16/74 TO JAMES FELT AND LETTER FROM JAMES FELT - HUBERTH & HUBERTH TO SHIRLEY E. FAHEY OF 12/20/74 IN CONNECTION TO PLAINTIFF'S DISPOSSES
- (6) DEFENDANTS' PETITION TO HAVE THEIR ACTS DISCHARGED UP TO THE 10/30/75, FOR THE FOURTH CURRENT ACCOUNTING.



(a) The action arises under Section 2, Article III of the Constitution of the United States, whereby the judicial Power shall extend to all cases in Law and Equity arising under this Constitution, as including CONTROVERSIES BETWEEN CITIZENS OF DEFFERENT STATES: \*\*\*

\*\* The matter in controversy exceeds, exclusive of interests and costs, the sum of One Hundred Thousand Dollars.

(b) Prior to January 29th, 1971, plaintiff, who then was and ever since has been a citizen of the United States became a legal beneficiary of a trust and other assets deriving from other sources under the terms dictated and established by Patrick D. Fahey in his last will and testament for the plaintiff's welfare and best interest.

(c) The terms established and dictated by the plaintiff's deceased father, dictate and establish that plaintiff shall receive no less than Two Thousand 00/100 (\$2,000.00) Dollars per month "from other sources" in addition to a testamentary trust.



(d) Since December 4th, 1970, the date of the decease of Patrick D. Fahey, plaintiff has not received her rightful income of Two Thousand 00/100 (\$2,000.00) Dollars per month, as provided under the last will and testament of Patrick D. Fahey on Page - 3, Section Third, Paragraph A, Lines - 9, 10, 11, for the plaintiff's welfare and best interests, intellectual growth and plaintiff's pursuit of happiness.

(e) Plaintiff has notified the defendants (hereinafter known as defendant) and also known as executors and trustees, that defendant has been violating plaintiff's rights to plaintiff's duly rightful income of Two Thousand 00/100 (\$2,000.00) Dollars per month.

(f) After January 29th, 1971, upon information and belief, and continuously to date, defendant has been retaining in his or her possession the accumulated amount and interest of plaintiff's duly rightful income of Two Thousand 00/100 (\$2,000.00) Dollars per month, and defendant has thereby been engaging in a premeditated practice of deprivation and oppression violating plaintiff's unalienable rights to the pursuit of happiness to plaintiff's irreparable damages.

APPENDIX B

DEFENDANTS' AFFIDAVIT IN  
SUPPORT OF MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT

(a) He is a resident of the State of Illinois and an attorney licensed to practice in the State of Illinois and is co-executor of the Will of Patrick D. Fahey, whose Will is an exhibit to the Complaint herein.

(b) Shirley F. Fahey is a resident of the State of Illinois and is co-executor of the Will of Patrick D. Fahey.

(c) The estate of Patrick D. Fahey has no assets in the State of New York.

(d) Further affiant saith not.



DEFENDANTS' MEMORANDUM IN  
SUPPORT OF THEIR MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT

Section 1:    Statement of the Case under Motion

(a)            By this action plaintiff seeks to recover compensatory damages from the defendants who it is alleged have violated plaintiff's rights to receive income under the Last Will and Testament of Patrick D. Fahey of which the defendants are executors.

(b)            Plaintiff alleges that since December 4, 1970, the date of the decease of her father Patrick D. Fahey, she has not received rightful income of \$2,000.00 per month as provided under the Last Will and Testament of her father Patrick D. Fahey (Cplt. 114) and that the defendants have been violating plaintiff's rights to the receipt of such income (Cplt. 117). Plaintiff further alleges that such action on the part of the defendants is a violation of plaintiff's unalienable rights to the pursuit of happiness which has caused her irreparable damage (Cplt. 117). It is further alleged

that such action on the part of the defendants gives plaintiff rights under Section 241 of the Crimes and Criminal Procedure, 18 U.S.C. § 241.

(c) With regard to the allegations of jurisdiction, the plaintiff alleges the action arises under Section 2, Article III of the Constitution of the United States, Section 241 of the Crimes and Criminal Procedure, 18 U.S.C. § 241, plaintiff is a resident of the State of New York, defendants are citizens of the State of Illinois and the matter in controversy exceeds, exclusive of interests and costs, the sum of \$100,000.00 (Cplt. 11).\*

## Section 2: The Motion

(a) By this motion defendants seek to dismiss this action on the ground that this Court lacks jurisdiction over the persons of the defendants. On the basis of the Affidavit submitted in support of this motion by defendant Norman Codo ("Codo Affidavit") it appears that neither of the defendants have had any contacts with the State of New York, are residents of the State of Illinois and that the estate of Patrick D. Fahey has no assets in the State of New York



The Complaint at 111 alleges that the defendants are citizens of the State of Illinois.

Section 3: The Argument

(a) Defendant Shirley E. Fahey is a resident of the State of Illinois (Cplt. 111 and Codo Aff. 112) and defendant Norman Codo is likewise a citizen of the State of Illinois (Cplt. 111 and Codo Aff. 111). The defendants are each executors of the estate of Patrick D. Fahey in which plaintiff claims an interest. The estate of Patrick D. Fahey has no assets in the State of New York. (Codo Aff. 113).

(b) There is no allegation in the Complaint upon which this Court can find jurisdiction over the defendants. There is no allegation respecting any transaction or event in which the defendants were a party which occurred in the State of New York or the Southern District of New York. The plaintiff has apparently proceeded in this Court on the erroneous assumption that her residence in the State of New York confers in personam jurisdiction over the defendants.\*

(c) \*If it is believed by the plaintiff that Section 241 of the Crimes and Criminal Procedure, 18 U.S.C. § 241, confers jurisdiction, that assumption is similarly erroneous. That section is a criminal provision making it a crime to conspire against the rights of any citizen in the free exercise or enjoyment of any right or privilege secured to such party by the Constitution or laws of the United States. Even assuming that provision conferred upon a citizen the right to bring a civil action, which it does not, it does not set forth any grounds for the exercise of jurisdiction by this Court over the person of a non-resident.

(d) Section 302(a)(1) - (3) of the New York Civil Practice Laws and Rules upon which long arm jurisdiction may be asserted over the person of non-residents provides as follows:

"§ 302. Personal jurisdiction by acts of non-domiciliaries.

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise



personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state; or

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or



4. owns, uses or possesses any real property situated within the state."

(e) No affirmative acts or other minimal jurisdictional basis required by CPLR Section 302 (a)(1) - (3) are alleged in the Complaint to have occurred in the State of New York. Accordingly, the plaintiff has not even provided a clue as to any claimed predicate of long arm jurisdiction assuming that one exists.



APPENDIX     D

PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO DEFENDANTS'  
MOTION AND MEMORANDUM TO  
DISMISS THE ACTION

Section 1:     Statement of the Memorandum to Deny  
                 Defendants' Motion

(a)           Section 1985(3) of Title 42, The  
Public Health and Welfare, is written as  
follows:

"If two or more persons in any State  
or Territory conspire or .....  
..... or cause to be done, any act in  
furtherance of the object of such  
conspiracy, whereby another is injured  
in his personal property, or deprived  
of having and exercising any right or  
privilege of a citizen of the United  
States, the party so injured or deprived  
may have an action for the recovery of  
damages, occasioned by such injury  
or deprivation, against any one or more  
of the conspirators."

(b)           Section 1985(3) of Title 42 gives  
reference to Section 1343 of Title 28, Judici-  
ary and Judicial Procedure, and said



Section 1343 of Title 28, Judicial and  
Judiciary Procedure.

"The district courts shall have  
original jurisdiction of any civil  
action to be commenced by any person:

- (1) To recover damages for injury  
to his person or property, or  
because of the deprivation of  
any right of privilege of a  
citizen of the United States,  
by any act done in futherance  
of any conspriacy mentioned  
in Section 1985 of Title 42."

(c) Both sections of both titles herea-  
bove mentioned reciprocally refer to each  
other and the content of the object or  
subject matter of both sections of both titles  
constitute a crime in Section 241 of Title 18,  
Crime and Criminal Procedure.

(d) Section 241 of Title 18(C.C.P.) reads  
as follows:

"If two or more persons conspire to  
injure, oppress, threaten, or intimidate  
any citizen in the free exercise or



enjoyment of any rights or privilege secured to him by the Constitution or Laws of the United States."

(e) This Section 241 of Title 18(C.C.P.) which gives reference to Section 1985(3) of Title 42 gives also reference to Section 1988 of Title 42 and this last Section 1988 of Title 42 reads as follows:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provision necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the States wherein the court



having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of criminal nature, in the infliction of punishment on the party found guilty."

(f) The violation by the defendants of plaintiff's rights to the pursuit of happiness derives from the defendants' abuse of power and authority as executors of the last will and testament of Patrick D. Fahey, plaintiff's deceased father, by depriving the plaintiff of her rightful inherited resources through deprivation and oppression.

Section 2: Reference to Page - 2 of Defendants' Memorandum

(a) That the defendants have violated through deprivation and oppression plaintiff's constitutional rights to the pursuit of happiness to plaintiff's



irreparable damages is hereby confirmed  
as hereinafter more fully appears.

Section        3:        Argument

(a)        Section 1 of Article III of the  
Constitution of the United States  
declares: the judicial Power of the  
United States, shall be vested in one  
supreme Court and in such inferior  
Courts: that is, as including district  
Courts.

(b)        Section 2, the subsequent  
section of Section 1 of Article III of  
the Constitution, declares that the  
judicial Power of such inferior Courts,  
as including district Courts, shall  
extend to all cases in Law and Equity  
arising under this Constitution, the  
Laws of the United States, as including  
controversies between citizens of  
different States.

(c)        A citizen whether a citizen of  
a state or citizen of the United States  
is defined to be a natural person as per  
Form 2, Title 28, Appendix--Rules of



Civil Procedure, Page - 87853 whereby Section (a) Jurisdiction founded on diversity of citizenship and Amount, states therein and within a footnote in the first line of said Form: "Plaintiff is a (citizen of the State of Connecticut)<sup>2</sup>". At the bottom of the page, the number "2" shown as Footnote (2) after the parenthesis, clearly defines that the Form shown in the Parenthesis is a Form for a natural person.

(d) A natural person, as defined in the Footnote of Form (2) of Title 28, Appendix--Rules of Civil Procedure refers to an individual which individual can be a citizen, civilian or otherwise, a member of a group or a corporation, as applied in Form 2(a) of Title 28, Appendix--Rules of Civil Procedure to either or both an individual citizen or corporation.

(e) Therefore, Section 2 of Article III of the Constitution of the United States supporting controversies between citizens of different States,



supports controversies between persons or individual citizens of different States.

Section 4: Reference to Page - 3  
(Footnote \*) of Defendants'  
Memorandum

(a) Defendant suggests that plaintiff invoked solely diversity of citizenship and amount, whereas, plaintiff invoked Jurisdiction Founded on a Federal Question and Amount in Controversy, including diversity of citizenship or controversy between citizens, persons or individual citizens of different States as referred in Section (5) of this page.

(b) Plaintiff invoked the jurisdiction of this Court upon Section 1343, Title 28, Judiciary and Judicial Procedure, wherein it is stated: The district Court shall have original jurisdiction of any civil action authorized by Law to be commenced by any person.

(c) Section 1343 is also supported in the "Notes of Advisory Committee", Title 28, Appendix-- Rules of Civil Procedure, Page - 7854.\*\*\*\*\*



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Section 5: Reference to Page - 4  
(Footnote \*) of Defendants'  
Memorandum

(a) Section 241, Conspiracy Against the Right of Citizens, Title 18, Crime and Criminal Procedures confers jurisdiction to the district Court:

"If two or more persons conspire to oppress any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution of the United States,"

That is, if two or more persons conspire to oppress any person, since it has been established heretofore in Form 2, Title 28, Appendix--Rules of Civil Procedure that a citizen is also a natural person whether it is also a natural person whether it is referred to as a person or personam.

(b) To elaborate on Section 241 of Title 18 of Crime and Criminal Procedure, where the word "oppress" occurs, the meaning of said word "oppress" as defined in the Webster dictionary, the dictionary of record, clearly states the meaning:



"to weigh heavily on the mind, spirits, or senses of; trouble; to keep down by the cruel or unjust use of power or authority."

(c) Clearly, the deprivation of plaintiff's rightful resources provided by her deceased father, Patrick D. Fahey in his last will and testament, constituted and still constitutes a state of oppression, economically and otherwise to the plaintiff, weighing heavily on the mind, creating worries and troubles, causing the plaintiff to set aside the pursuit of her goal as a writer due to said deprivation of resources on the part of the defendants in their use and abuse of their authority as executors and thereby oppressing.

(d) Wherefore, defendants have violated the constitutional right to the pursuit of happiness to which the plaintiff is privileged to enjoy being a citizen of the United States, a republican democratic nation, governed by democratic laws to work out justice and not injustice.



(e) The executors agreed to execute said last will and testament of Patrick D. Fahey in conformity with his wish and will and yet the defendants, also citizens of the United States, have violated said last will and testament of the deceased, Patrick D. Fahey by not adhering to his expressed wish and will.

(f) It is the intent of the plaintiff to prove such a violation on the part of the defendants and that the defendants are personally responsible to said violation to which the defendants have not answered as yet.

(g) That the violation of plaintiff's right of the pursuit of happiness is a violation of the Federal Constitution, which right for the violation thereof may be litigated in the District Court, elected for that purpose by plaintiff by reference, Section 1988 of Title 42 of the U.S.C. provides for such disposition of this matter of jurisdiction.



APPENDIX E

SUPPLEMENT TO PLAINTIFF'S  
MEMORANDUM IN OPPOSITION  
TO DEFENDANTS' MOTION TO  
DISMISS

(a) C.P.L.R. 302. Personal Jurisdiction by Acts  
of Non-Domiciliaries.

(a) "Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this Section, a Court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

(3) \*\*\* commits a tortious act without the state causing injury to person or property within the state, if he engages in any other persistent course of conduct," \*\*\*\*

(b) The tortious act committed by the defendants, without the state, caused to the plaintiff, within the state, through deprivation and oppression, also damage to her personal property or properties, as hereinafter more fully appears.

(c) It was through the deprivation of plaintiff's



rightful income that the defendants caused the plaintiff to loose all of her books(15 cartons), which were needed for her research work, and all her furniture, all of which was the gift of plaintiff's father.

(d) It was through this persistent act of deprivation of income that plaintiff was forced by necessity to move from her apartment in 1972, which apartment was provided and paid for by plaintiff's father at 27 East 65th Street, New York, where she had lived for eleven years and had to place all her possessions in storage in the Morgan Manhattan Storage Company, 153 East 87th Street, New York, which she subsequently lost due to her lack of income.

(e) That the various dispossession notices at her new apartment in 1974 and the total lack of furniture in said apartment at the time constitutes a state of harassment deriving from this violation and irresponsibility of said defendants.

(f) Hereto are letters from the defendant to the management of said apartment house and the management's response in 1974, dispossessing notice from said management, and a letter from defendant to plaintiff's maid serivece in 1972 which the plaintiff will submit as some of the material evidence at the request of the Court.



(g) The defendants were instructed to provide for the plaintiff no less than \$2,000.00 per month from this trust and from other sources of said last will and testament of Patrick D. Fahey and which, the defendants never fulfilled.

(h) The defendants as executors have failed in their responsibility that they accepted to fulfill in 1970, the date of the decease of plaintiff's father.

(i) The defendants, by engaging in this persistent course of conduct have committed a tortious act toward the plaintiff, which act has caused deprivation and oppression to the plaintiff and which still continues.

(j) Plaintiff has not received her rightful income of \$2,000.00 per month since the death of plaintiff's father and neither an explanation in writing to that effect although on numerous occasions throughout the past five years, defendants were requested to do so.

(k) At this point in this supplement to plaintiff's memorandum, plaintiff calls upon the protection of the New York law, being a citizen of the State of New York, as well as the protection of the law of the United States, which laws guarantees to the individual the Constitutional right and protection against the deprivation of "life,



liberty, and property and pursuit of happiness".

(1) Reference is hereby made to plaintiff's memorandum, and to Section 1985(3), Title 42, Section 1343, Title 28, and Section 1988, Title 42, of the U.S.C., which provides that "the common law, as modified and changed by the Constitution and statutes of the States shall be extended so far as the same is not inconsistent with the Constitution and laws of the United States."



APPENDIX      F

PLAINTIFF'S AFFIDAVIT IN  
SUPPORT OF PLAINTIFF'S  
MEMORANDUM TO DENY DEFEN-  
DANTS' MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT

(a)            That the defendants, known also as defendant, in their "affidavit in support of motion of defendants to dismiss complaint" and related defendants' memorandum have failed to answer plaintiff's complaint served on the defendants in Joliet, Illinois on the 10/3/75.

(b)            The plaintiff clearly states and underlines on Page - 2, Paragraph - 3 of said plaintiff's complaint that "the terms established and dictated by the plaintiff's deceased father, dictate and establish that plaintiff shall receive no less than \$2,000.00 per month "from other sources" in addition to a testamentary trust".

(c)            The defendants have stated that "the estate of Patrick D. Fahey has no assets in the State of New York".

(d)            The defendants have not stated where the assets are located of the property over which the decedent Patrick D. Fahey has power of appointment, which property are excluded from the estate of Patrick D. Fahey as written in the decedent's last will and testament, Page -3, Section Third, 2nd Line, which property are declared to be



one of the "other sources", and it is supported by the Instruction for Form 706, Instruction for Schedule H, Page - 9, Paragraph 4, entitled "Supplement Data" and also on Schedule H - Powers of Appointment on Page - 9 of said Form 706, Internal Revenue Service, United States Estate Tax Return, Line 3 of said Schedule H.

(e) That the plaintiff claims her rightful income of no less than \$2,000.00 per month from said property over which the decedent has power of appointment in addition to the testamentary trust and from the other sources as stated on Page - 5, Paragraph 7 and Paragraph 10 of said last will and testament of Patrick D. Fahey.

(f) Hereto attached are Instruction Form 706 of the Internal Revenue Service and Schedule H of Form 706 - Powers of Appointment.

(g) Hereto attached are also the letters to be submitted at the request of the Court as mentioned in plaintiff's supplement memorandum in opposition and to deny defendants' motion to dismiss plaintiff's complaint.



Section 1:            The Facts

(a)            Neither of the defendants are residents of nor have any contacts with the State of New York. Stripped to its most simplified terms, plaintiff in her memoranda and affidavit in opposition to the defendants' motion asserts that the defendants caused damage to her personal property located within the State of New York as a result of their failure as executors under the Will of her deceased father to make certain distributions to her allegedly due from her father's estate. Such actions or omissions took place outside the State of New York. None of the assets of her father's estate are situated in New York.

Section 2:            Argument

(a)            The plaintiff in her memoranda argues that this Court has jurisdiction over the defendants by virtue of the Civil Rights Act, 42 U.S.C. § 1985 et seq. and Section 1343 of the Judiciary and Judicial Procedure, 28 U.S.C. § 1343,



as well as under Section 302(a)(3) of the New York Civil Practice Laws and Rules.\* None of those provisions under the facts of this case confer upon this Court in personam jurisdiction over the defendants.

(b) Upon the reading of plaintiff's memoranda it is learned that plaintiff asserts her claim against the defendants under the Civil Rights Act, 42 U.S.C. § 1985(3) which provision she contends gives her the right to institute a civil action against the defendant executors on the grounds that they have conspired to deprive her of her property.

(c) Assuming plaintiff asserts a valid cause of action under the Civil Rights Act the jurisdictional provisions cited by the plaintiff only authorize the plaintiff to proceed on her cause of action in a federal district court. None of the federal law provisions cited by the plaintiff in her memoranda authorize nationwide service of process nor do they authorize an expansion of in personam jurisdiction greater than that provided in Rule 4(f) of the Federal Rules of Civil Procedure. Rule 4(f) provides in relevant part as follows:

"(f) Territorial Limits of Effective Service.  
All process other than a subpoena may be



served any where within the territorial limits of the state in which the district court is held, and, when authorize by a statute of the United States or by these rules, beyond the territorial limits of that state."

(d) In Safeguard Mutual Insurance Company v. Maxwell, 53 F.R.D. 116 (E.D. Penn. 1971) the Court dismissed an action brought under the Civil Rights Act, 42 U.S.C. §1985 et seq. against the non-resident defendants. The court noted that the plaintiffs who were seeking to invoke nationwide jurisdiction had cited no authority for their proposition. That court found that 42 U.S.C. § 1988 (similarly relied upon by plaintiff Fahey) did not extend the territorial jurisdiction of the court proscribed by Rule 4 (f).

(e) A similar holding was reached in Smith v. Ellington, 348 F.2d 1021 (6th Cir. 1965) where the plaintiff brought an action in the Eastern District of Tennessee alleging that the defendants, including non-resident defendants, had abridged his rights in violation of Section 1985 of the Civil Rights Act, 42 U.S.C. § 1985 (the other provision of the Civil Rights Act relied upon by plaintiff Fahey). The court dismissed the action against the non-residents and found that jurisdiction over them was lacking.



In so doing it found, Rule 4(f) of the Federal Rules of Civil Procedure controlling. The court noted that Section 1343 of the Judiciary and Judicial Procedure, 28 U.S.C. § 1343 (relied upon by plaintiff Fahey) \*\*\*\* "which confers original jurisdiction upon the district courts in certain civil right actions deals with jurisdiction of the subject matter of the litigation; not with personal jurisdiction over the defendants."

(f) The plaintiff additionally attempts to rely upon the New York long arm statute. Section 302 (a)(3)(i) of the New York Civil Practice Laws and Rules which provides as follows:

"§ 302. Personal jurisdiction by acts of non-domiciliaries.

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent: \*\*\*\*\*

(3) commits a tortious act without the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or \*\*\*\*\*,



(g) Even assuming that the alleged acts of the defendants were found to be torts committed outside the state which cause injury to the plaintiff, none of the allegations contained in the Complaint or facts before this Court suggest that either of the defendants regularly solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state.

(h) No allegation whatsoever has been made to the effect that either of the defendants have had even the most minimal contacts with the State of New York without which no jurisdiction can be asserted under the long arm statute.

(i) If the plaintiff asserts jurisdiction over the moving defendants, upon the ground that they "do( ) or...engage ( ) in any other persistent course of conduct...inthe state..." then she similarly has failed to meet the burden upon her to establish jurisdiction. It is not enough under the New York long arms statute to simply allege a persistent course of conduct by defendants without showing that the persistent course of conduct is in the State of New York\*. Research has ~~failed to disclose any case~~ dealing with the question. However, Professor



Joseph M. McLaughlin in his Practice Commentary to Section 302 of the CPLR contained in McKinney's Consolidated Laws of New York at C302:22 has commented on the "persistent course of conduct" provision as follows:

"If an injury occurs in New York through the the commission of a tortious act outside the state, the tortfeasor may be subject to jurisdiction if he engaged in "any other persistent course of conduct". Again, it is not required that the cause of action arise out of the conduct, so long as it arises from the tortious act. The language was probably inserted to round out the preceding provision (engaging in business in New York) for doing and soliciting business in New York, so that any repeated conduct in New York which does not constitute "business" would suffice. The obvious difference between the two provisions is that the persistent course of conduct may involve a great range of human activity which, while it might fall beyond the pale of "business" conduct, would, because of its consistency, serve as a solid link of jurisdiction to New York.

(j) \*Plaintiff in her affidavit in opposition to defendants motion does not set forth any act or acts which constitute a persistent course of conduct in the State of New York. She has cited one case which has no bearing whatsoever on the issue nor does it relate to or rely upon CPLR § 302(a)(3). That case



Karsh v. Karsh, 62 Misc. 2d 783, 301 N.Y.S. 2d 578 (Sp. Ct. Bronx Co. 1970), found jurisdiction under CPLR § 302 (a)(2) over a non-resident who committed a tortious act within the state.

(k) Further assertion of in personam jurisdiction over these defendants would violate the due process requirements enunciated in International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1943) and McGee v. International Life Ins. Co., 355 U.S. 320, 78 S.Ct. 199, 2 L.Ed 2d 223 (1967). See also Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed. 1283 (1958) where extra-territorial jurisdiction over a non-resident trustee in a will contest involving trust assets not located in the forum state was denied because the defendant trustee did not have "minimal contacts" with Florida, the forum state.

PLAINTIFF'S REPLY MEMORANDUM  
TO DEFENDANTS' REPLY MEMO-  
RANDUM AND MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT

(a)        In regard to Section 302, and the related lines of Paragraph (3) and (i) of said Section, again the tortious act committed by the defendants is clearly stated.

(b)        To state in the most simple terms, the defendants have violated the plaintiff's constitutional rights by depriving her through a consistent course of conduct, through deprivation and oppression by not giving plaintiff her rightful resources for the past five years, which constitutes a fiduciary crime supported by Page - 3, Section Third, Line 2, of the last will and testament of Patrick D. Fahey, where it is written that "the property over which I have power of appointment are excluded from the estate."

(c)        Again supported by Page - 7, Section Sixth (A), where it is written that the executor (Patricia A. Fahey) must reimburse for the amount of taxes payable as to property "over which I have power of appointment".

(d)        The United States Internal Revenue Code, including the Instructions for Form 706, clearly states the definition of "power of appointment".



(e) Again, the defendants have not stated in simple words where the assets over which the decedent has power of appointment are located, which again, are excluded from the estate of Patrick D. Fahey.

(f) Are the defendants saying that these properties or trust or estates, over which the deceased, Patrick D. Fahey, has power of appointment are located in no State?

# EXHIBIT 1

## LAST WILL AND TESTAMENT

OF

PATRICK D. FAHEY

I, PATRICK D. FAHEY, of Joliet, Illinois, make this my will and revoke all of my former wills and codicils.

FIRST: I give all of my personal effects, household goods, automobiles and all other items of goods and chattels to my wife, SHIRLEY E. FAHEY (hereinafter called "my wife"), if she survives me, or, if she predeceases me, to my children who survive me in equal shares to be divided among them as they agree, or if they fail to agree within six (6) months after my death, as my executors determine. My children on the date hereof are SHIRLEY E. JONES and PATRICIA A. FAHEY.

SECOND: If my wife survives me, I give to SHIRLEY E. FAHEY and NORMAN F. CODO, of Joliet, Illinois, as trustees, property equal in value to fifty per cent (50%) of the value of my adjusted gross estate as finally determined for federal estate tax purposes, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my wife otherwise than by the terms of this section.

The executors may satisfy this gift in cash or in kind, and property distributed in kind shall be selected in such manner that the cash and other property distributed will have an aggregate fair market value fairly representative of this gift's proportionate share of the ap-

B. L. F.

ADMITTED

JAN. 29 1971



preciation or depreciation in value to the date, or dates, of distribution of all property then available for distribution. Any property included in my estate and used to satisfy this gift shall be valued for that purpose at the value thereof as finally determined for federal estate tax purposes. No property shall be used to satisfy this gift as to which a marital deduction is not allowable. This gift shall abate to the extent that it cannot be satisfied in the manner hereinabove provided.

The trust shall be held as follows:

A. Commencing with my death and during the life of my wife, the trustees shall pay to her the net income from the trust at least annually and in addition such amounts from principal as the trustees from time to time believe desirable for her comfortable maintenance, medical care and welfare, considering her other income known to the trustees.

B. The trustees also shall pay to my wife such amounts from the principal of the trust as she from time to time may direct in writing.

C. On my wife's death, the principal of the trust and all accrued or undistributed net income thereof shall be distributed to or for the benefit of such persons or organizations, including my wife's estate, in such proportions and subject to such trusts and conditions as my wife directs by will specifically referring to this power to appoint.

D. Any principal and any accrued or undistributed net income not effectively appointed by my wife shall be added to the residuary trust established by ARTICLE THIRD hereof, to be administered as a part thereof.

*D. B. F.*



THIRD:

I give and devise the residue of my estate, excluding any property over which I have power of appointment, to the said SHIRLEY E. FAHEY and NORMAN F. CODO, as trustees, upon the following terms:

A. The trustees shall distribute to any one or more of SHIRLEY E. FAHEY, ELSIE M. SMITH, SHIRLEY E. JONES, PATRICIA A. FAHEY and PATRICK FAHEY PLEPEL so much or all of the income and principal of the trust at such time or times and in such equal or unequal portions as the trustees believe desirable for the best interests and welfare of said persons, considering the desirability of supplementing their respective incomes or assets and all other circumstances and factors the trustees believe pertinent provided, however, that PATRICIA A. FAHEY shall receive no less than Two Thousand 00/100 (\$2,000.00) Dollars per month from this trust and from other sources.

B. Upon the last to die of ELSIE M. SMITH and SHIRLEY E. FAHEY, or upon my death if they should predecease me, the trustees shall distribute the principal and any accrued or undistributed income of the trust to or for the benefit of such of my descendants in such proportions and subject to such trusts and conditions as my wife directs by her Will, specifically referring to this limited power to appoint but excluding the power to appoint to herself, her estate, her creditors or the creditors of her estate. Any principal and accrued or undistributed income not effectively appointed by my wife shall be distributed as follows:

(1) One-fourth ( $\frac{1}{4}$ ) to SHIRLEY E. JONES if living, and if not living, per stirpes to her then living descendants, and if none of her descendants is then living then per stirpes to my then living descendants.

(2) One-half ( $\frac{1}{2}$ ) to PATRICIA A. FAHEY if living, and if not living, per stirpes to her then living descendants and if none of her descendants is then living,

P. D. F.



then per stirpes to my then living descendants.

(3) One-fourth ( $\frac{1}{4}$ ) to PATRICK FAHEY PLEPEL if living, and if not living, per stirpes to his then living descendants, and if none of his descendants is then living, then per stirpes to my then living descendants.

FOURTH:

In the administration of the trusts created hereunder, I direct the trustees as follows:

A. Any income or discretionary principal payment due to any beneficiary hereunder which the trustees determine the beneficiary is unable to properly administer shall be made in any one or more of the following ways: (1) to the legal guardian or conservator of the beneficiary; (2) to a relative or friend of the beneficiary, to be expended for the beneficiary; or (3) by making direct expenditures for the beneficiary.

B. No interest under this instrument shall be assignable by any beneficiary, or be subject to the claims of his or her creditors, including claims for alimony or separate maintenance.

C. The trustees shall have the following powers with respect to each trust, exercisable in the trustees' discretion:

(1) To retain any property transferred to the trustees, without liability for any loss, even though the trustees would not purchase the property as a trust investment and though to retain it might violate sound investment diversification principles.

(2) To sell at public or private sale, contract to sell, grant options to buy, convey, transfer, exchange, partition, dedicate, lease, or grant easements for a term within or extending beyond the term of the trust, repair, improve, remodel, demolish, or abandon, any real or personal property of the trust.

P. Q. F.



(3) To borrow money, and to mortgage or pledge trust property.

(4) To invest in bonds, common or preferred stocks, notes, real estate mortgages, common trust funds, shares of any investment company or trust, or other securities, and real or personal property, without being limited by any law regarding investments by trustees.

(5) To allot to the trust an undivided interest in property, make joint investments for the trust and any other trust hereunder, distribute property in cash or in kind, or partly in each, and to determine the value of any property so allotted or distributed.

(6) To exercise in person or by proxy all voting and other rights, powers and privileges, and take all steps to realize all benefits, with respect to stocks or other securities.

(7) To cause any security or other property to be held in the name of a trustee personally, or in the name of a nominee.

(8) To pay all expenses incurred in the administration of the trust, including reasonable compensation to the trustees, and employ and pay reasonable compensation to agents and counsel, including investment counsel.

(9) To create out of income and add to principal reserves for depreciation or obsolescence.

(10) To deal with the fiduciary or any other estate or trust, even though the fiduciary is a trustee hereunder.

(11) To compromise or abandon any claim or demand in favor of or against the trust.

J.O.F.



(12) To retain and invest in real property (including any land trust interest), to collect the rents and earnings, to keep in tenable repair the buildings and fixtures, to employ agents and custodians, to make all reasonable expenditures to preserve the property, to insure the property, the trustees and any person having an interest in or responsibility for the care, management, or repair of the property against risks as the trustees determine advisable, to sell and contract to sell, grant options to buy, convey, exchange, partition, dedicate, mortgage, lease and grant options to lease for any period of time, grant or release easements, improve, subdivide, dedicate parks, streets, and alleys, vacate any subdivision or alley, construct, remodel, and demolish or abandon buildings; and to create out of income and add to principal reserves for depreciation and obsolescence.

(13) To retain stock or other securities of any private corporation or company without liability for any loss, even though the trustee would not purchase the property as a trust investment, and though to retain it might violate sound investment diversification principles, and:

(a) to participate in the management of the company by having the trustees or one or more employees or agents of the trustees act as an officer or director or both, with appropriate compensation from the company;

(b) to borrow from the trustees personally or others;

(c) to increase the investment of the trust in the company by making secured or unsecured loans to the company, purchasing common or preferred stock of the company or to pledge trust property for debts of the company.

G. W. F.



The trustees shall exercise ordinary business judgment in determining how long such stock or other securities shall be retained, it being my intention that the trustees shall retain such stock or other securities as long as in the trustees' judgment it is in the best interests of the trust, and the trustee shall not be liable for any loss that may result therefrom. I realize that I am exposing the trust to risks inherent in all business operations, but believe the possibility of preserving the capital and income values of such stock or securities to justify such risks.

(14) To do all other acts to accomplish the property management, investment and distribution of the trust.

FIFTH: I name my wife and NORMAN F. CODO as executors of this will and direct that no security on the executor's bond be required. If my wife or NORMAN F. CODO fail or cease to act as executors, I name PATRICIA A. FAHEY as executor. I direct that no security on the executor's bond be required.

SIXTH: A. I direct the executor to pay out of my estate passing hereunder all expenses of administering my estate and all estate, inheritance, transfer and succession taxes (including interest and penalties, if any) which become due by reason of my death. I waive on behalf of my estate any right to recover from any person, including any beneficiary of insurance on my life, any part of such taxes except that the foregoing shall not be construed as a waiver of any right of the executor to reimburse for the amount of taxes payable as to property, if any, over which I have power of appointment.

G.D.F.

B.

I give to the executor the



following powers and discretions, in each case to be exercisable without court order:

(1) To sell at public or private sale, to retain, to lease, to borrow money and for that purpose to mortgage or to pledge, all or part of the real or personal property of my estate;

(2) To settle claims in favor of or against my estate;

(3) To exercise or not to exercise any election or option granted to executors by the Internal Revenue Code in force at my death, even though such exercise or non-exercise increases or decreases estate principal or income, without adjustment to principal or income.

(4) To distribute the residue of my estate in cash or in kind or partly in each and for this purpose the determination of the executor as to the value of any property distributed in kind shall be conclusive;

(5) To execute and deliver any deeds, contracts, mortgages, bills of sale or other instruments necessary or desirable for the exercise of his powers and discretions as executor.

(6) To join with my surviving spouse in filing joint federal income tax returns, and in any federal gift tax return filed by my surviving spouse to consent to have any gifts therein reported made to third persons as made one-half by me to the extent permitted by the Internal Revenue Code in force at my death; and to pay any part or all of the tax shown due by any or all of such income and gift tax returns, including any deficiencies, interest and penalties subsequently determined to be due thereon without reimbursement from my surviving spouse; and

J. W. F.



(7) All powers and discretions granted to the trustees under this will.

SEVENTH: If any person takes any action to prevent the admission to probate or to contest the validity of this will, that person shall take nothing hereunder.

EIGHTH: If my wife and I both have died and there is insufficient evidence that we died otherwise than simultaneously, my wife shall be considered to have survived me for all purposes of this instrument.

IN WITNESS WHEREOF, I have signed this will, consisting of nine pages, this page included, and have initialed each preceding page, this 29 day of JUNE, 1970.

Patrick D. Fahey

We certify that in our presence on the date appearing above PATRICK D. FAHEY signed the foregoing instrument and acknowledged it to be his will, that at his request and in his presence and in the presence of each other we have signed our names below as witnesses, and that we believe him to be of sound mind and memory.

Susan M. Scheppe

Andrea K. Burtin

Ramona S. Hall

1631 Marquette Col.

Polist. Illinois

265 May St

Manhattan Illinois

R.D.#2, Runkle

Colist, Ill.



*Patrick D. Fahey*

REAL ESTATE • INSURANCE • MORTGAGE LOANS

128 SCOTT STREET  
JOLIET, ILL.

August 2, 1972

723-5811

EXHIBIT 2

We Answer Phones  
1095 Second Ave.  
New York, New York, 10022

RE: Patricia A. Fahey  
Apt. 8E  
27 East 65th Street  
New York, New York  
Account No. 5A007

Gentlemen:

You have heretofore sent bills for services for the above to P. D. Fahey, 128 Scott, Joliet, Illinois, 60431. Mr. Fahey died 12-3-70, and you are hereby informed henceforth bills should go to the above individual and that the Estate of Patrick D. Fahey assumes no responsibility for payment of said bills.

You are also notified that the undersigned, the widow of Patrick D. Fahey, does not individually assume any responsibility for the payment of bills for these services.

You are requested to contact Patricia A. Fahey at the above address for arrangement for future payment of these bills.

Yours truly,

*Shirley E. Fahey*  
Shirley E. Fahey

SEF:mkg

*We have this date Complied with the above  
as of 9/1/72 New billing will take place.  
Thank you for your Cooperation.*

*Jim [Signature]  
We Answer Phones*

*Patrick D. Fahey*

REAL ESTATE • INSURANCE • MORTGAGE LOANS

EXHIBIT Z

August 15, 1972

128 SCOTT STREET  
JOLIET, ILL.

723-5811

Robert Douglas Maid Service, Inc.  
22 East 17th Street  
New York, New York, 10003

RE: Patricia A. Fahey  
Apt. 8E  
27 East 65th Street  
New York, New York

Gentlemen:

You have heretofore sent bills for your services for the above address to P. D. Fahey, 128 Scott, Joliet, Illinois, 60431. Mr. Fahey died 12-3-70, and you are hereby informed henceforth bills for such services should go to the above individual and that the Estate of Patrick D. Fahey assumes no responsibility for payment of said bills.

You are also notified that the undersigned, the widow of Patrick D. Fahey, does not individually assume any responsibility for the payment of bills for these services.

You are requested to contact Patricia A. Fahey at the above address for arrangement for future payment of these bills.

Yours truly,

*Shirley E. Fahey*

Shirley E. Fahey

SEF:mkg





MOVING  
PACKING  
STORAGE  
FIREPROOF VAULTS

1411 THIRD AVENUE AT 80th STREET • NEW YORK, N. Y. 10028 • (212) 535-9100  
510 WEST 21st STREET • NEW YORK, N. Y. 10011 • (212) 929-1300

CABLE ADDRESS: MORGANWARE



PLEASE REPLY TO:  
1411 THIRD AVENUE

## EXHIBIT 3

November 6, 1975

To Whom It May Concern:

The goods stored with us under the name, Miss Patricia Fahey were sold at Public Auction in March of 1975. The account at that time was far in arrears, from September of 1972 to June of 1973 Miss Fahey made 2 payments of \$340.80 and \$213.19 totaling \$553.99.

Morgan Manhattan Stg. Co.

*Philip M. Welty*  
Philip M. Welty  
Bookkeeper

OVER 120 YEARS OF SERVICE



MEMBER Allied Van Lines



# EXHIBIT 4

Civil Court of the City of New York  
County of New York

F. Heinrich, Printer, 128 Lafayette Street, New York, N.Y.

L & T No.

## IMPORTANT TO THE TENANT

If you are dependent upon a person in the Military Service of the United States, advise the clerk of the court immediately, in order to protect your rights.

MAURICE FLAM, Petitioner As Attorney For

**INSJARL REALTY CO.**

Petitioner  
(Landlord)  
Address

c/o Flam, 350 Broadway, New York, N.Y. 10013

— against —

**PATRICIA FAHEY,**  
750 Park Avenue,  
New York, N.Y. (Apt. # 2-E)

Respondent (Tenant)  
Address

Respondent (Undertenant)  
Address

*First Name of Tenant and/or Undertenant being fictitious and unknown to petitioner. Person intended being in possession of the premises herein described.*

**FLAM & FLAM**  
Attorneys for Landlord  
350 Broadway, N.Y. 10013  
Tel. WOrth 6-5955

Notice of Petition  
Non-Payment  
(Dwelling)

To the respondent(s) above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that the annexed petition prays for a final judgment of eviction, awarding to the petitioner possession of premises described as follows:

the **1½** rooms on the **2nd** floor Apartment No. **# 2-E** side in House  
and Premises known as Number **750 Park Avenue**  
Borough of Manhattan in the City of New York. ~~XXXXXX~~

TAKE NOTICE also that demand is made in the petition for judgment against you for the sum of **\$750.00**, with interest from **May 1**, 1975

TAKE NOTICE also that **WITHIN FIVE DAYS** after service of this Notice of Petition upon you, you must answer, either orally before the Clerk of this Court at

111 Centre Street

County of New York, City and State of New York, or in writing by serving a copy thereof upon the undersigned attorney for the petitioner, and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim\* you may have against the petitioner. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than three nor more than eight days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for FIVE days from the date of such judgment. (\*If such defense or counterclaim is properly cognizable herein.)

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

In the event you fail to answer and appear, final judgment by default will be entered against you but a warrant dispossessing you will not be issued until the tenth day following the date of the service of this Notice of Petition upon you.

Dated: City of New York, County of New York,  
the **13th** day of **May**, 1975

**PHOENIX INGRAHAM**  
Clerk of the Civil Court of the  
City of New York.

**FLAM & FLAM**  
Attorneys for Petitioner  
350 Broadway, N.Y. 10013  
Tel. WOrth 6-5955



Civil Court of the City of New York, County of New York:

The Petition of MAURICE FLAM, of said City, respectfully shows that your Petitioner is the attorney for

INSJARL REALTY CO.

who is the Owner in fee and Landlord of the premises hereinafter described. Upon information and belief said Landlord heretofore entered into an agreement with on or about May 13, 1974 in writing

PATRICIA FAHEY

First name of Tenant being fictitious and unknown to petitioner. Person intended being in possession of the premises herein described.

as Tenant thereof, and that by the terms of said agreement, the said Tenant hired from the said Landlord FOR DWELLING PURPOSES ONLY the premises described and designated as follows

the 11 rooms on the 2nd floor Apartment No. # 2-E in House and premises known as Number 750 Park Avenue

which is situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York

and that the said Tenant, in and by said agreement, undertook and promised to pay to the said Landlord the sum of (\$ 375.00 ) dollars per month payable monthly

in advance on the 1st day of each month as rent for the use and occupation of said premises.

The premises are a multiple dwelling and there is a currently effective registration statement on file with the Office of Code Enforcement Code Enforcement Registration # Agents Name Address

# 103495

Paul Klein

488 Madison Avenue,  
New York City 10022

Upon information and belief that said Tenant entered into the possession of said premises and still occupies the same.

That the property sought to be recovered herein is the residence address of the Tenant herein.

These premises are decontrolled having become vacant subsequent to July 1st, 1971.

(SEE RIDER)

~~The premises described herein are subject to the provisions of the New York City Rent Control and Rent Stabilization Laws.~~

Upon information and belief that by virtue of said agreement there was due and owing by the Tenant to the Landlord as and for rent a sum of money set opposite each particular monthly period listed below:

For the Monthly Period commencing on the 1st day of each of the following months in the year 19 75

	Rent Due		Rent Due		Rent Due
April	\$ 375.00		\$		\$
May	\$ 375.00				

and that the total rent in arrears now due and owing is \$ 750.00 for which amount judgment is demanded against the Tenant.

That your petitioner further shows, upon information and belief, that said total rent in arrears has been demanded personally from the said Tenant since the same became due, and that said Tenant has made default in the payment of said rent and that said Tenant and

Assignee and/or Undertenant (if any) holds over and continues in possession of said premises without the permission of the said Landlord after default in the payment of the rent as aforesaid and that your petitioner is duly authorized to institute and maintain these Proceedings to dispossess said Tenant and those claiming possession under said Tenant.

WHEREFORE, your Petitioner prays for a Final Judgment awarding to the Petitioner as attorney for the Landlord the possession of said premises; and for a personal judgment for rent in arrears for the sum of \$ 750.00

with interest from the 1st day of May, 19 75 together with costs and disbursements in this action; and for a Warrant to remove said Tenant, Assignees and/or Undertenant from the possession of said premises.

Dated, New York, May 13, 19 75

MAURICE FLAM

Petitioner  
MAURICE FLAM

CITY OF NEW YORK  
COUNTY OF NEW YORK } ss:

Being duly sworn doth depose and say that deponent is the petitioner in the foregoing petition and has read said petition and that the contents of said petition by said petitioner subscribed are true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief and as to those matters deponent believes the same to be true.

That deponent is an attorney at law duly admitted to practice in the courts of the State of New York and is the attorney for the Landlord as related to the within proceeding. That the grounds of his belief are statements and information supplied by the managing agent for the Landlord of the premises herein.

Sworn to before me this

13th day of May, 19 75

VIOLET L. MESORANA  
Commissioner of Deeds, City of New York, 1-1141  
Certificate filed in New York County  
Commission Expires Dec. 1, 1976

MAURICE FLAM



# EXHIBIT 5

December 16, 1974

CERTIFIED MAIL

Mr. James Felt  
ATTN: Mr. Russ  
488 Madison Ave.  
New York City, New York 10022

Dear Mr. Felt:

I am sending you, herewith, a check for \$375.00 to apply on December 1974 rent for the apartment occupied by Patricia Fahey. If you are not willing to accept this check solely for such December 1974 rent, and to permit Patricia Fahey to remain in the apartment personally occupied by her for the balance of December 1974, you are not authorized to retain and negotiate said check but you shall forthwith return it to me.

I shall assume no responsibility for past or future rent which Patricia Fahey may owe to you, or any other obligation or liability she may owe to you.

Very truly yours,

*Shirley E. Fahey*

SHIRLEY E. FAHEY  
128 Scott Street  
Joliet, Illinois 60431

BEST COPY AVAILABLE



*12/27*  
*delivered to Mr. [unclear]*

EXHIBIT 5

December 29, 1974

Mrs. Shirley E. Fahey  
128 Scott Street  
Joliet, Illinois 60431

Re: 750 Park Avenue  
Apartment 2-E

Dear Mrs. Fahey:

As we informed you in our telephone conversation on December 18, 1974 we cannot accept your check in payment of rent for December inasmuch as Ms. Patricia Fahey now owes rent from November 1st.

We can, however, accept the check on account of the total balance due. Acceptance of this check cancels any legal dispossession proceedings so that she will be assured of staying in possession until December 31st. We will expect the matter to be fully cleared up by that date. If not, we would then have no other recourse but to institute another action after January 1, 1975.

We will accept your immediate reply so that we may deposit your check on a account.

As we informed you, acceptance of this check will not cause you to assume any responsibility for Patricia Fahey's obligations.

Very truly yours,

JAMES FELT-HUBERTH & HUBERTH

Ralph R. Russ

*delivered to Mr. [unclear]*

RRR:FCW

AIR MAIL



NOTICE OF CURRENT ~~AND~~ FINAL ACCOUNTIN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS — PROBATE DIVISION

Estate of

PATRICK D. FAHEY,

Deceased.

No. W70 PE 400

Docket 42

Page 509

To: See attached schedule

On March 9, 1976, at 2:00 P.M., or as soon thereafter as the matter  
 occupied by Judge Emil DiIorenzo or  
 may be heard, in Room any Judge sitting, County Courthouse, Joliet, Illinois, I will present the  
in his place  
4th current account of Shirley E. Fahey and Norman F. Codo  
 (current) (final)  
as\* Co-Executors of this estate, a  
filed in the Clerk's office  
 copy of which is attached, and ask that it be approved, ~~\*\* that the estate be declared settled~~, and that the  
Co-Executors be discharged from ~~the estate~~ further accounting for their  
 acts up to 10-31-75.

If the account is approved by the court upon the hearing, in the absence of fraud, accident or mis-  
 take, the account as approved is binding upon all persons to whom this notice is given.

Copy received ....., 19.....

## CERTIFICATE OF ATTORNEY

I certify that on ....., 19....., I served this notice by .....  
 (delivering) (mailing)  
 a copy to each person to whom it is directed.

Attorney

## AFFIDAVIT OF SERVICE

Dolores Frankovich on oath states: on January 23, 1976,

I served this notice by mailing ..... a copy to each person to whom it is directed.  
 (delivering) (mailing)

Dolores FrankovichName Alexander Bonds & Thomas E. Moran

Attorney for Co-Executors

Address 5 E. Van Buren 1 N. LaSalle St.City Joliet, Ill. Chicago, Ill.

Telephone (815) 726-7331 (312) 782-5700

Signed and sworn to before me

Jan. 23, 1976Mary Anne Monfardini  
Notary PublicCommission expires Feb. 21, 1978

\*Insert: "executor," "administrator," "guardian," "conservator," or other capacity.

\*\*Strike part not applicable.